

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY FITZPATRICK,

Defendant.

Case No. 16-CR-060-JED-1

OPINION AND ORDER

Before the Court is a “Notice of Request for Provision of Transcripts” (“Motion”) [Dkt. No. 419] and an Application to Proceed in District Court Without Prepaying Fees or Costs (“Application”) [Dkt. No. 420] filed by Defendant Timothy Fitzpatrick (“Defendant”). For the reasons set forth below, the Motion [Dkt. No. 419] and Application [Dkt. No. 420] are DENIED.

Defendant’s filings here are brief. The Motion asks the Court to provide a copy of the transcript of Defendant’s sentencing hearing held on November 27, 2017.¹ Dkt. No. 419 at 1. Defendant states that this “would allow him to support pending legal proceedings in a different jurisdiction.” *Id.* Defendant also seeks to have the cost of the transcript waived, noting that he “seeks relief as an indigent prisoner.” *Id.*

An indigent defendant does not have an absolute constitutional right to a free transcript in a collateral proceeding. *Ruark v. Gunter*, 958 F.3d 318, 319 (10th Cir. 1992) (citing *United States v. MacCollom*, 426 U.S. 317, 327 n.5 (1976)). While an indigent defendant may be entitled to have the Government pay the fees for a copy of a transcript, this is only when bringing certain

¹ The Court notes that the Motion states that the sentencing hearing occurred on December 27, 2017. Dkt. No. 419 at 1. However, upon review of the docket, Defendant’s sentencing hearing took place one month earlier on November 27, 2017. *See* Dkt. No. 344.

proceedings and only when the defendant demonstrates that the “suit is not frivolous and that the transcript is needed to decide the issue presented by the suit.” *United States v. Austin*, No. 94-1108, 1995 WL 94632, at *1 (10th Cir. Feb. 28, 1995); *see also* 28 U.S.C. § 753(f) and *Sistrunk v. United States*, 992 F.2d 258, 259 (10th Cir. 1993) (construing § 735(f) as requiring that the defendant show particularized need for the transcript).

Here, Defendant simply requests the transcript at no cost. Defendant’s vague statement that the transcript is needed to “support pending legal proceedings in a different jurisdiction” is not sufficient. Dkt. No. 419 at 1. Without stating a particularized need for the transcript, the Court is unable to evaluate whether Defendant’s request is warranted. Thus, the Court denies Defendant’s Motion.

Likewise, the Court denies Defendant’s Application. Defendant has been sentenced and there is nothing further pending in this matter.

IT IS THEREFORE ORDERED that Defendant Timothy Fitzpatrick’s Notice of Request for Provision of Transcripts [Dkt. No. 419] and Application to Proceed in District Court Without Prepaying Fees or Costs [Dkt. No. 420] are DENIED.

DATED this 20th of April 2023.



JOHN F. HEIL, III
CHIEF UNITED STATES DISTRICT JUDGE